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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DEAN ALLEN BALIJA,

Defendant and Appellant.

A142231

(Napa County  
Super. Ct. No. CR169465)

Defendant Dean Allen Balijs entered a negotiated plea to receiving stolen property (Pen. Code, § 496, subd. (a)), evading a police officer (Veh. Code, § 2800.2, subd. (a)), and resisting a police officer (Pen. Code, § 148, subd. (a)(1)). He admitted two strike priors. (Pen. Code, § 667, subds. (b)-(i).) The court denied a motion to dismiss the strike priors (*People v. Superior Court (Romero)* 13 Cal.4th 497 (*Romero*)) and sentenced defendant to four years in state prison. Defendant contends the trial court erred in denying the motion to dismiss the strike priors. We affirm.

**BACKGROUND**

**A. *Underlying Offenses*<sup>1</sup>**

On February 1, 2014, about 1:30 a.m., a sheriff's deputy noticed defendant driving a maroon Nissan with a passenger in the front seat. The deputy ran the license plate and noticed that the car's registration was expired. As the deputy was checking his computer,

<sup>1</sup> Inasmuch as defendant entered his plea before the preliminary hearing stage, the facts of the underlying offenses are derived from the probation officer's report.

the car made a quick u-turn and sped away. The deputy followed the car and observed it driving “at an extreme rate of speed” and going through a red light. He initiated a traffic stop, but the car failed to yield. Defendant continued to speed ahead, travelling at an estimated 60 miles per hour. At one point, defendant lost control of the car, nearly hitting several parked cars. Eventually, defendant pulled over in a “skidding halt.” Defendant got out of the car and ran for the fence of a nearby house. The passenger stayed in the car. The deputy chased after defendant, ordering him to stop. As defendant began to climb the fence, the deputy pulled him down. The deputy caught defendant and punched him in the face. Defendant refused to comply with the deputy’s verbal commands. In light of this non-compliance, together with the fact that defendant had not been searched for weapons and was wearing clothing that concealed his waistband, defendant was “deemed a threat to officer safety.” As the passenger began moving around in the car, the deputy held the passenger and defendant at gunpoint with commands to remain still. Defendant, however, kept moving around. Using his foot, the deputy forced defendant back to the ground.

Other deputies arrived at the scene and searched the car. After being given a *Miranda* warning, defendant apologized to the deputy and admitted to recently smoking methamphetamine. The deputy found several pieces of mail and identification cards belonging to other people, which he believed had been stolen. The passenger, after given a *Miranda* warning, told police that when he and defendant saw the deputy following them, defendant said he was not going to stop. Defendant told the passenger to hide the mail. At the jail, defendant said he had found the mail and the identification cards and that he did not know they were stolen. He also said that someone else had left the methamphetamine pipe in his car.

According to the probation officer’s report, defendant was a “Very High risk to re-offend.” His criminal record included nine felony convictions, with seven prior prison sentences.

***B. Romero Motion***

In his motion to dismiss the strike priors, defendant proffered the following factors in mitigation: 1) his 1986 convictions were remote and resulted in a single four-year prison term; he was just 21 years old at the time; 2) in the present case, though potentially dangerous, no one was injured and there was minimal property damage; 3) the instant offense occurred while he was under the influence of methamphetamine; 4) upon his arrest, he was apologetic and remorseful; 5) he had been accepted into two long-term residential treatment programs; 6) five character letters were written on his behalf; and 7) he submitted his own letter expressing his need for residential treatment.

In opposition, the prosecutor argued that defendant was convicted in March 1987 for two separate robberies occurring in January 1986 and in December 1986. He was sentenced to three years in prison for one robbery, with a consecutive one-year term for the second robbery. Due to court record purging, the prosecutor was unable to provide the court with a factual synopsis of the January 1986 robbery. In the second robbery, occurring a year later, in December 1986, defendant and a female co-defendant confronted two victims in an apartment at a residential motel demanding money. When the male victim reported that he had no money, co-defendant told him that he better find some. Co-defendant left the room, leaving the two victims with defendant. Defendant first grabbed the female victim, pulled out a 6-inch knife and threatened the male victim. While defendant held both victims at knife point, co-defendant went in and out of the room, acting as a lookout. The female victim gave defendant \$110; her small child was in the room and the victim was afraid for all of their safety. The female victim was able to escape and ran toward the manager's office to call the police. Defendant yelled after her that if she called the police, he would kill her boyfriend.

The prosecutor argued the motion should be denied because defendant had a long and extensive criminal history, including nine prior felony convictions before the commission of the instant offenses. Although defendant's two strike convictions occurred in 1987, he had not led a crime-free life since then. His most recent conviction occurred in 2008, which was within six years of the current offense. With respect to the

2008 conviction, defendant was discharged from parole in August 2012, which was within two years of the present offense. Further, defendant had been sentenced to numerous prior prison terms.

In denying the motion, the trial court stated that “This is an extraordinarily . . . difficult decision” because it was “called on to predict the future” whether defendant “will or will not” act in accordance with the law. The court stated that it did not have confidence that defendant was at the stage where he was able to conform his behavior to the law. Despite ample opportunity to reform himself, defendant failed to reform since his last prison sentence. In addition, the court did not find defendant’s intoxication at the time of the current offense a mitigating factor. Instead, it made him more dangerous.

Similarly, the court did not find defendant’s remorse and admission of guilt a mitigating factor since it was “compelled.” In the court’s opinion, there was no defense to explain or mitigate defendant’s actions. And there could be no alternative explanation for defendant’s actions. Additionally, evidence of defendant’s guilt was “overwhelming and overpowering.” As a result, defendant’s early admission of wrongdoing did not lead the court to conclude that he had “achieved the kind of contrition” that supported a decision to strike the strike priors.

Although the court acknowledged that defendant might be at a stage in his life where he was ready to reform, there was no real reason for the court to think that would happen. Rather, the court believed defendant wanted leniency because he was facing another prison term. The court expressed its hope that after this latest imprisonment defendant would decide to “lead a law-abiding life.” The court also urged him to seek treatment for his drug addiction once he was out of custody.

### **DISCUSSION**

Defendant argues that the trial court abused its discretion by not striking his two prior strike convictions for sentencing purposes under Penal Code section 1385 and *Romero, supra*, 13 Cal.4th 497. We disagree.

A trial court may, on its own motion and “ ‘in furtherance of justice,’ ” dismiss a finding that a defendant has previously been convicted of a strike. (Pen. Code, § 1385,

subd. (a); *People v. Carmony* (2004) 33 Cal.4th 367, 373; *Romero, supra*, 13 Cal.4th at pp. 529-530.) “[I]n ruling whether to [do so] . . . , or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes law]’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

“ ‘The striking of a prior serious felony conviction is not a routine matter. It is an extraordinary exercise of discretion, and is very much like setting aside a judgment of conviction after trial.’ [Citation.]” (*People v. McGlothlin* (1998) 67 Cal.App.4th 468, 474.) It is a conclusion “that an exception to the [sentencing] scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.” (*Ibid.*)

We review for an abuse of discretion the determination whether to dismiss a strike under Penal Code section 1385. (*People v. Carmony, supra*, 33 Cal.4th at p. 374, fn. 5.) The Three Strikes law, which is “ ‘intended to restrict courts’ discretion in sentencing repeat offenders[,]’ . . . [¶] . . . [¶] . . . creates a strong presumption that any sentence that conforms to [its] sentencing norms is both rational and proper.” (*Id.* at pp. 377-378.) As a result, “a trial court will only abuse its discretion in failing to strike a prior felony conviction . . . in limited circumstances,” such as where it did not realize it had discretion to do so, where it “considered impermissible factors in declining to dismiss” the conviction, or where “ ‘the sentencing norms [of] [. . . the Three Strikes law . . . ] produce[ ] an “arbitrary, capricious[,] or patently absurd” result’ under the specific facts of a particular case.” (*Id.* at p. 378.)

Defendant does not claim that the trial court misunderstood the scope of its discretion or considered improper factors. Instead, he argues that he falls “outside the spirit of the Three Strikes law” because the court failed to give adequate consideration to the many factors he proffered in favor of striking the prior strikes. Specifically, he argues

that the prior strikes occurred over 28 years ago, when he was “immature and young.” He asserts that the strike priors were committed during “a single aberrant period of time[,]” for which he served a single prison term. While noting the dangerousness of the current offenses, defendant states that “no actual violence” was involved. He also notes that he showed remorse for committing the offenses and immediately apologized. Defendant adds that he makes poor decisions when he is under the influence of drugs and alcohol; on his own volition, he sought out residential treatment facilities and was accepted at Delancey Street Foundation and the Jericho Project. Finally, he states that he has the support of many friends.

The court denied the *Romero* motion because it was concerned that defendant would not be able to conform his behavior to the law if he were released on probation. The court determined that, despite ample opportunity, defendant had failed to reform himself. The court further found that defendant only appeared ready to reform himself because he was facing another prison term. Furthermore, the court explained that defendant’s intoxication at the time of the current offenses was not a mitigating factor. We agree with the trial court. A life of crime cannot be justified or excused by drug use; the failure to “follow through in efforts to bring his substance abuse problem under control” is not a mitigating circumstance justifying a decision to strike a strike. (*People v. Williams, supra*, 17 Cal.4th at p. 163.) We agree with the trial court’s implicit determination that defendant’s efforts in securing a space in two residential treatment facilities were too little and too late to justify striking his prior strikes.

While we recognize that defendant’s prior strikes were remote in that they occurred in 1986, he had not exactly led a crime-free life since then. By the time of the current offenses, he had suffered nine felony convictions and served seven prison terms. Although defendant was not convicted of a crime between his last conviction in 2008 and the present offenses in February 2014, six years is not a significant time to demonstrate rehabilitation, especially when defendant committed the current offenses within just two years of being discharged from parole in August 2012.

Moreover, although the prior strikes resulted in a single prison term, the underlying robbery offenses occurred nearly a year apart. The court was not required to strike one of these disparate offenses because they were not based on a single act. (See *People v. Vargas* (2014) 59 Cal.4th 635, 645-647.)

We reject defendant's contention that his conduct does not fall within the spirit of the Three Strikes law because "no actual violence" was involved in the current offenses. Defendant, who admittedly was high on methamphetamine, led police on a dangerous, high-speed vehicle chase, in which he nearly hit several parked cars, followed by a foot pursuit, which ended with police needing to physically subdue him.

Finally, defendant claims he is a "different person" now, arguing that at the time he committed the strike offenses he was young and immature. However, even disregarding defendant's criminal history and claim of past immaturity, the facts of the current offenses demonstrate that defendant is still unable to conform his behavior to the law. While defendant was apologetic and remorseful at the scene, given the " " "particulars of his background, character, and prospects" ' ' ' ' ' (*People v. Carmony*, *supra*, 33 Cal.4th at p. 377), the trial court did not abuse its discretion in denying defendant's *Romero* motion.

### **DISPOSITION**

The judgment is affirmed.

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REARDON, J.

We concur:

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RUVOLO, P. J.

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RIVERA, J.